TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1914.

No. ~~494~~ 147

CHARLES C. PENNINGTON, PLAINTIFF IN ERROR,

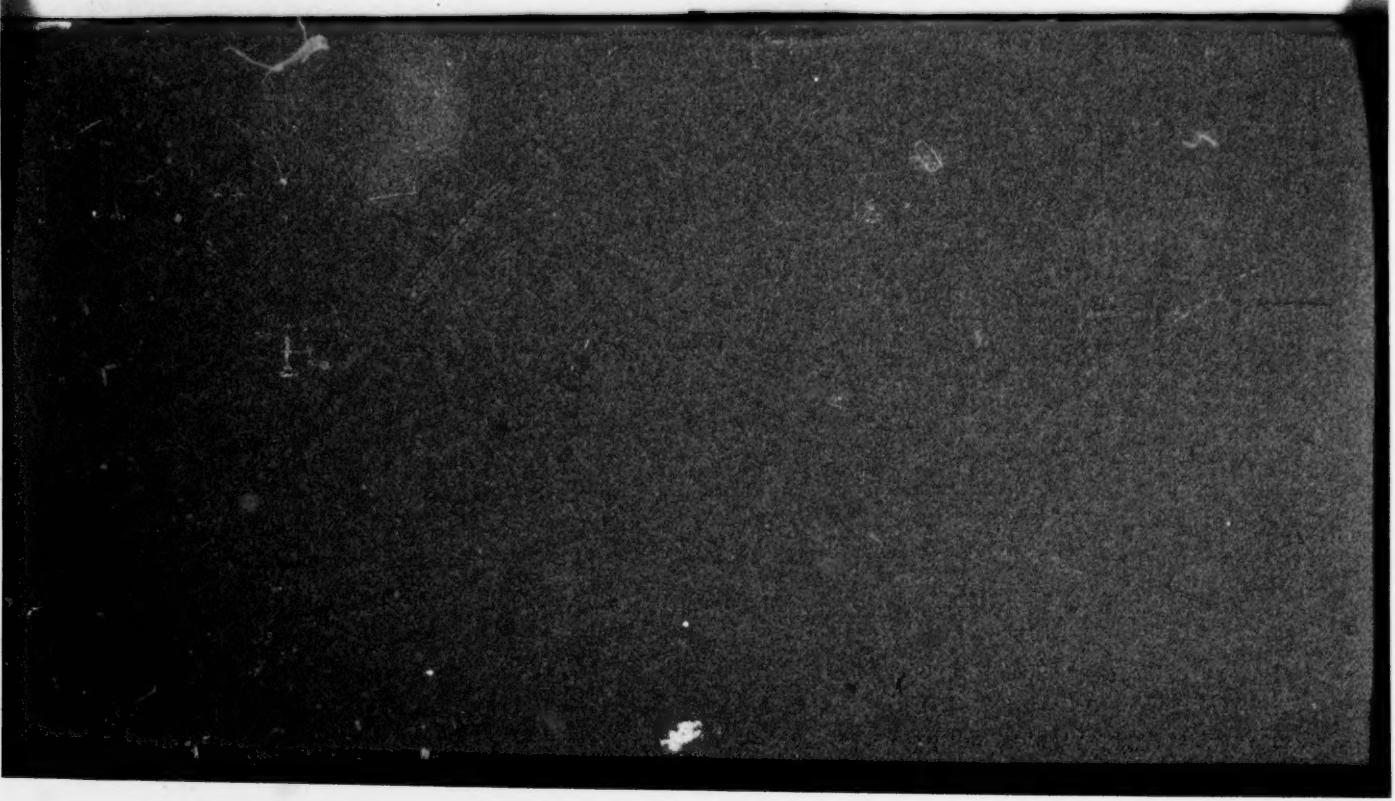
vs.

THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED JUNE 12, 1915.

(24,775)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 26, 1915.

a Filed Jan. 28, 1914. Supreme Court of Ohio. Frank E. McKean, Clerk.

Supreme Court of Ohio.

No. 14474.

CHARLES C. PENNINGTON, Plaintiff in Error,
versus
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Error to the Court of Appeals for Hamilton County.

RECORD.

Mallon & Vordenberg, Attorneys for Plaintiff in Error.
W. S. Little, Attorney for Defendant in Error.

1 Supreme Court of Ohio.

RECORD.

Petition in Error.

(Filed January 9, 1914.)

No. 14474.

CHARLES C. PENNINGTON, Plaintiff in Error,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Charles C. Pennington, plaintiff in error, says that at the November Term, A. D. 1913, of the Circuit Court and the Circuit Court of Appeals of Hamilton County, Ohio, in a certain proceeding numbered 5584 on the docket of said Court, the defendant in error, the Fourth National Bank of Cincinnati, Ohio, recovered a judgment by the consideration of said court against the plaintiff in error, in an action then pending therein, wherein said plaintiff in error was plaintiff in error, and defendant in error was defendant in error, to all of which this plaintiff in error excepted.

2 A Transcript of the Docket and Journal Entries in such cause duly certified, together with the original pleadings and papers are filed herewith.

And this plaintiff in error says that there is error in said record and pleadings in this, to-wit:

1. The Court of Common Pleas erred in sustaining the demurrer of defendant in error to the amended reply of the plaintiff in error.
2. The Circuit Court of Appeals erred in sustaining the judgment of the Court of Common Pleas and in rendering judgment in favor of defendant in error and against plaintiff in error.
3. Said judgment is contrary to law.
4. Other errors of law appearing on the record, to which plaintiff in error excepted.

Plaintiff in error therefore prays that the said judgment may be reversed, set aside and held for naught, and that judgment may be rendered in favor of plaintiff in error, and that he be restored to all things that he has lost by reason thereof, and for all other and proper orders and relief in the premises, and his costs herein.

MALLON & VORDENBERG.

Issuance and service of summons in error is hereby waived and appearance of defendant in error is hereby entered.

THE FOURTH NATIONAL BANK,
By W. S. LITTLE.

3 *Petition in Error.*

(Filed March 28, 1912.)

Circuit Court, Hamilton County, Ohio.

No. 5584.

CHARLES C. PENNINGTON, Plaintiff in Error,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Charles C. Pennington, plaintiff in error, says that at the October Term, A. D. 1911, of the Superior Court of Cincinnati, Hamilton County, Ohio, the defendant in error, the Fourth National Bank of Cincinnati, Ohio, recovered a judgment by the consideration of said Court against the plaintiff in error, in an action then pending therein, wherein said plaintiff in error was plaintiff and defendant in error was defendant—to all of which this plaintiff in error excepted.

A transcript of the docket and journal entries in such cause, together with the original pleadings and papers are filed herewith.

And this plaintiff in error says that there is error in said record and pleadings in this, to-wit:

1. The court erred in sustaining the demurrer of defendant in error to the amended reply of the plaintiff in error;

4 2. The Superior Court erred in rendering judgment in favor of defendant in error and against plaintiff in error on its answer in said cause;

3. Said judgment is contrary to law;
4. Other errors of law appearing on the record, to which plaintiff in error excepted.

Plaintiff in error therefore prays that said judgment may be reversed, set aside and held for nought, and that judgment may be rendered in favor of plaintiff in error, and that he be restored to all things that he has lost by reason thereof, and for all other and proper orders and relief in the premises, and his costs herein.

MALLON & VORDENBERG.

Issue and service of summons in error is hereby waived and appearance of defendant in error is hereby entered.

THE FOURTH NATIONAL BANK,
By W. S. LITTLE, *Attorney.*

Transcript of Docket and Journal Entries in Circuit Court and Court of Appeals.

(Filed in Supreme Court —.)

Petition in error, transcript and original papers filed March 28, 1912. Superior Court No. 54597.

1912, Mar. 28.—Waiver of summons in error and entry of appearance of defendant in error filed. (See Pet.)

5 1913, Nov. 12.—Min. 9: Judgment of affirmance at costs of plaintiff in error.

This cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Superior Court of Cincinnati, and was argued by counsel; on consideration whereof, the court finds there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $—.

To all of which plaintiff in error excepts.

(Duly certified.)

Petition.

(Filed December 10, 1909.)

Superior Court of Cincinnati.

No. 54597.

CHARLES C. PENNINGTON, Plaintiff,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant.

The defendant is, and at all times hereinafter stated, was a corporation duly organized and existing under the laws of the United States.

6 For cause of action against defendant, plaintiff says that on the 1st day of September, 1908, plaintiff had on deposit in the bank of the defendant, the Fourth National Bank of Cincinnati, Ohio, the sum of $1,395.17, subject to any check he might draw thereon.

That on said day he drew a check on said defendant bank, requesting it to pay to the order of Walter B. Pennington $1,395.17.

That on the 5th day of September, 1908, and while said sum of money was still on deposit in said bank, said Walter B. Pennington presented said check, during banking hours, to the defendant bank, for payment, which was refused whereby plaintiff was compelled to pay the same. That since last mentioned day, said bank has honored a check made in favor of Jos. R. Peebles Sons Company, which reduced the amount so on deposit to $1,347.54.

Wherefore, plaintiff prays for judgment against the defendant in the sum of $1,347.54, with interest from September 5, 1908, his damages claimed as above set forth, and for his costs herein.

MALLON & VORDENBERG,
Attorneys for Plaintiff.

(Duly verified.)

7

Answer.

(Filed January 8, 1910.)

Now comes the defendant, the Fourth National Bank, and for answer to the petition says that it admits the allegations therein contained, except as may be denied herein.

This defendant further says that on or about the 4th day of September, 1908, one Clara M. Pennington commenced an action in the Court of Common Pleas, of Hamilton County, Ohio, against the plaintiff, Charles C. Pennington, and this defendant, being cause No. 140831, wherein she prayed for a divorce, alimony, custody of children, injunction and for all proper relief; that on or about the 4th day of September, 1908, this defendant was served with summons in said cause, and with an order restraining it from paying out any money which it held belonging to the plaintiff, Charles C. Pennington; that on or about the 10th day of September, 1908, this defendant filed its answer in said cause, stating that it had an account upon its books in the name of Charles C. Pennington, with a credit balance of fourteen hundred and forty-five dollars and seventeen cents; that this defendant, from time to time during the pendency of said cause, by order of said Court of Common Pleas, paid from said credit balance certain sums of money, amounting in all to five hundred and fifty dollars; that during the

8 January term, 1909, of said court, a final decree was entered ordering among other things that the plaintiff herein "be forever divested of all and every claim, title or interest to the said sum of fourteen hundred and forty-five dollars and seventeen cents in possession of said bank," and this defendant was perpetually enjoined from paying any part of said sum on the order of Charles

C. Pennington, and this defendant was ordered by said court to pay the balance of said money, eight hundred and ninety-five dollars and seventeen cents, to Clara M. Pennington, or to Eugene C. Pociey, her attorney, on account of alimony and attorney's fees therein decreed; and that this defendant, in compliance with said order of court, paid said balance of money, as in said order provided.

Defendant further says that said amount of fourteen hundred and forty-five dollars and seventeen cents included the amount of thirteen hundred and forty-seven dollars and fifty-four cents mentioned in the petition herein, and that this defendant did not on September 1st, 1908, or at any time since then, have any other money of the plaintiff on deposit.

Wherefore said defendant asks that it be hence dismissed with its costs.

THE FOURTH NATIONAL BANK,
By W. S. LITTLE, *Its Attorney.*

(Duly verified.)

9 *Amended Reply.*

(Filed by Leave April 7, 1911. Minute 109.)

Plaintiff by way of amended reply to the answer of the defendant admits that the proceedings in case No. 140831, Common Pleas Court, were had as alleged therein, but says that the alleged orders and judgment of the Court made in said cause were void, inoperative and of no effect, for the following reasons:

Said C. C. Pennington, during the pendency of said suit was not a resident of the state of Ohio, and defendant knew, or ought to have known that fact.

The return of summons by the Sheriff in said cause showed that said C. C. Pennington was "not found in said county."

An affidavit for service by publication was then made in said cause, which stated that the residence of said C. C. Pennington "was unknown and that service could not be had within the state of Ohio."

The publication of notice and proof thereof in said cause stated his "place of residence was unknown."

This plaintiff at no time submitted to the jurisdiction of the Court in said cause.

No summons was served upon him in said action, nor did he appear in said action voluntarily, or otherwise.

10 The court in said cause had no jurisdiction either of the person or property of this plaintiff, and hence could not render a valid judgment or make any valid orders against this plaintiff or order said bank to pay said money to any one but its owner, C. C. Pennington.

Plaintiff says that the payment of his money by the bank without his authority to others than this plaintiff was illegal and without authority of law, and thereby plaintiff has been deprived of his prop-

erty without due process of law in violation of the Constitution of the United States, and particularly of Section 1, Article XIV thereof.

Wherefore, plaintiff asks judgment as praved for in his petition.

MALLON & VORDENBERG,
Attorneys for Plaintiff.

(Duly verified.)

Demurrer to Amended Reply.

(Filed by Leave March 2, 1912. Minute 436.)

Now comes the Fourth National Bank and demurs to the amended reply, on the ground that on its face it is insufficient in law.

11 *Transcript of Docket and Journal Entries in Superior Court.*

(Filed in Circuit Court March 28, 1912.)

To December 20, 1909. Petition filed December 10, 1909. Action for money; amount claimed, $1,347.54, with interest from September 5, 1908, and costs.

1909, Dec. 10. Summons issued.

1909, Dec. 20. Summons returned endorsed: Received December 10, 1909, Henry W. Hamann, Sheriff. Cincinnati, December 15, 1909. Served the within named defendant, the Fourth National Bank of Cincinnati, Ohio, by delivering a true copy of this writ with all the endorsements thereon personally to C. Wilson, Vice-President thereof, no other chief officer being found in my county. Henry W. Hamann, Sheriff of Ham. Co., O., by Geo. Paul, Deputy. Sheriff's fees, $1.00.

1910, Jan. 8. Answer of defendant filed.

1910, Feb. 17. Min. 413: Leave given plaintiff to file reply.

1910, Feb. 17. Reply filed.

1911, Feb. 21. Demurrer to reply filed.

1911, Apr. 7. Min. 109: Leave given to file amended reply.

1911, Apr. 7. Amended reply filed.

1912, Mar. 2. Min. 436: Entry withdrawing demurrer to original reply.

12 Now comes the defendant and by leave of court withdraws his demurrer to the original reply heretofore filed herein.

1912, Mar. 2. Min. 436: Leave given to file demurrer to amended reply.

1912, Mar. 2. Demurrer to amended reply filed.

1912, Mar. 2. Min. 436: Entry sustaining demurrer to amended reply, and judgment for defendant and costs; plaintiff excepts.

This cause came on this day to be heard on the demurrer of the defendant to the amended reply herein, the court, on consideration thereof, sustains the same. And plaintiff not desiring to plead further, it is considered by the court that the defendant go hence without day, and recover from the plaintiff its costs herein expended.

To all of which the plaintiff excepts.

(Duly certified.)

13 UNITED STATES OF AMERICA,
Supreme Court of Ohio, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court of Ohio, in the City of Columbus, this 10th day of June, A. D. 1915.

[Seal The Supreme Court of the State of Ohio.]

FRANK E. McKEAN,
Clerk of the Supreme Court of Ohio.

14 Supreme Court of Ohio.

No. 14474.

CHARLES C. PENNINGTON, Plaintiff in Error,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Petition for Writ of Error, Assignment and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court in rendering judgment against him in the above entitled case, the plaintiff in error hereby prays a writ of error from the said decision and judgment to the United States Supreme Court, and order fixing the amount of a bond.

The petition of plaintiff, in the Superior Court of Cincinnati, Ohio, against the defendant The Fourth National Bank, prayed for the recovery of $1,347.54, with interest from September 5, 1908, which he claimed he had on deposit in said bank, the payment of which it refused on a check duly presented.

The defendant's answer alleged that Clara N. Pennington, on September 4, 1908, brought suit in the Common Pleas Court of Hamilton County, against said Charles C. Pennington for divorce, alimony, custody of children and an injunction, and she made the said bank a party defendant. On September 4, 1908, the bank was served with summons together with an order restraining it from paying out any money which it held belonging to Charles C. Pennington. From time to time during the divorce suit, the bank, by order of said Common Pleas Court, paid from the money it held belonging to Charles C. Pennington, the sum of Five hundred and fifty Dollars. During the January Term, 1909, a final decree was entered in said case ordering that Charles C. Pennington be forever divested of all and every claim, title or interest to the sum of One thousand four hundred and forty-five dollars and seventeen
15 cents ($1,445.17) held by the bank for him at the commencement of said divorce suit, and that the bank pay the balance

of said money to his wife, Clara M. Pennington, or to Eugene C. Pociey, her attorney, on account of alimony and attorney's fees. The bank paid out the balance of said money in accordance with said decree.

The plaintiff replied admitting said proceedings were had, but complained that the alleged orders and judgment of the court made in said divorce case were void, for the following reasons, that—

"Said C. C. Pennington, during the pendency of said suit was not a resident of the state of Ohio, and defendant knew, or ought to have known that fact.

The return of summons by the sheriff in said cause showed that said C. C. Pennington was 'not found in said county.'

An affidavit for service by publication was then made in said cause, which stated that the residence of C. C. Pennington 'was unknown and that service could not be had within the state of Ohio.'

The publication of notice and proof thereof in said cause stated his 'place of residence was unknown.'

This plaintiff at no time submitted to the jurisdiction of the court in said cause.

No summons was served upon him in said action, nor did he appear in said action voluntarily, or otherwise.

The court in said cause had no jurisdiction either of the person or property of this plaintiff, and hence could not render a valid judgment or make any valid orders against this plaintiff or order said bank to pay said money to any one but its owner, C. C. Pennington.

Plaintiff says that the payment of his money by the bank without his authority to others than this plaintiff was illegal and without authority of law, and thereby plaintiff has been deprived of his property without due process of law in violation of the Constitution of the United States, and particularly of Section 1, Article XIV, thereof."

To this amended reply, said bank filed a demurrer, on the ground that on its face it was insufficient in law.

Said demurrer was sustained by said Court and thereupon there was a judgment in said case by said Court in favor of defendant and against your petitioner and dismissing plaintiff's action; whereupon plaintiff prosecuted error to the Supreme Court of the State of Ohio,
that being the highest Court of Law or Equity of said state in
16 which a decree or judgment could be had in said case, assigning therein as error the sustaining of said demurrer in said case by said Supreme Court and the judgment of said Court dismissing said case and in favor of said defendant.

Your petitioner, by the allegations of said amended reply, raised and presented a Federal question.

At the January Term, 1915, of the Supreme Court of the State of Ohio, the petition and the record came on to be heard in said Supreme Court; and on the 30 day of March, 1915, the said Supreme Court rendered its final judgment therein affirming the judgment of the Court below, namely—The Superior Court of Cincinnati, Ohio—

And assigning error therein, your petitioner says that in the record

and proceedings in the aforesaid case there is manifest error in this, to wit:

The Supreme Court of Ohio erred in holding and deciding that your petitioner was not deprived of his property without due process of law, as set forth in his said amended reply, and in holding that the proceedings set forth in said pleadings were valid. The validity of the proceedings set forth in said case was denied and drawn in question by your petitioner on the ground *that* their being repugnant to and in conflict with Article 14, Sec. 1 of the Constitution of the United States, which declares that no person shall be deprived of his property without due process of law.

For which errors the plaintiff in error prays that the said judgment of the Supreme Court of the State of Ohio be reversed and a judgment rendered in favor of plaintiff and for costs.

MALLON & VORDENBERG,
Attorneys for Charles C. Pennington.

STATE OF OHIO,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by Charles C. Pennington to The Fourth National Bank, in the sum of $200.00.

HUGH L. NICHOLS,
Chief Justice, Supreme Court of Ohio.

17 Dated May 28th, 1915.

[Endorsed:] No. 14474. Supreme Court of Ohio. Charles C. Pennington, Plaintiff in Error, vs. The Fourth National Bank of Cincinnati, Ohio, Defendant in Error. Petition for Writ of Error, Assignment and Prayer. Filed May 28, 1915. Supreme Court of Ohio. Frank E. McKean, Clerk. Mallon & Vordenberg, Att'ys for Plaintiff in Error.

18 *Original Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Ohio before you, or some of you, being the highest Court of law or equity of said State in which a decision could be had in a suit between Charles C. Pennington and The Fourth National Bank of Cincinnati, Ohio, wherein was drawn in question the validity of the proceedings of the Court of Common Pleas of Hamilton County, Ohio, and the proceedings in said above named case, as fully set forth in the record and proceedings in this Supreme Court of the State of Ohio, on the ground of their being repugnant to and

in conflict with the provisions of the Constitution of the United States and the amendments thereto, and said decision was in favor of the validity of said proceedings, a manifest error hath happened, to the great damage of the said Charles C. Pennington, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 28 day of May, in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, Southern Dist. Ohio.]

B. E. DILLEY,
Clerk of the District Court of the United States of the Southern District of Ohio, Eastern Division.

Allowed by

HUGH L. NICHOLS,
Chief Justice of the Supreme Court of the State of Ohio.

[Endorsed:] 14474. Pennington vs. Fourth Nat'l Bank of Cin'ti, O. Writ of Error. Filed May 28, 1915. Supreme Court of Ohio. Frank E. McKean, Clerk.

19 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Fourth National Bank of Cincinnati, Ohio, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court *Court* of the State of Ohio wherein Charles C. Pennington is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Hugh L. Nichols, Chief Justice of the

Supreme Court of the State of Ohio this 28 day of May, in the year of our Lord one thousand nine hundred and fifteen.

Eugene A. Scanlon is deputized to make service hereof.

HUGH L. NICHOLS,
Chief Justice of the Supreme Court of the State of Ohio.

Attest:
FRANK E. McKEAN,
Clerk of the Supreme Court of Ohio.

20 On this 29th day of May, in the year of our Lord one thousand nine hundred and fifteen, personally appeared Eugene A. Scanlon before me, the subscriber, a Notary Public in and for Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to The Fourth National Bank of Cincinnati, a corporation, by delivering the same to G. W. Williams, its Vice President, no other chief officer being found; also, on June 1, 1915, served said Bank by delivering a true copy of within citation to Charles E. Wilson personally, its President; also, on June 1, 1915, served W. S. Little, attorney for said Bank, by delivering to him a true copy of within citation.

EUGENE A. SCANLON.

Sworn to and subscribed the 1st day of June, A. D. 1915.
A. D. 1915.

[Notarial Seal, Hamilton Co., Ohio.]

HARRY W. VORDENBERG,
Notary Public in and for Hamilton County, Ohio.

[Endorsed:] Pennington vs. Bank. Citation and Return. Filed Jun- 10, 1915. Supreme Court of Ohio. Frank E. McKean, Clerk.

21 Supreme Court of Ohio.

No. 14474.

CHARLES C. PENNINGTON, Plaintiff in Error,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Præcipe.

To the Clerk:

Prepare transcript of the entire copy of Record in the above case together with a copy of the opinion of the Court, if any.

MALLON & VORDENBERG,
Attorneys for Plaintiff in Error.

[Endorsed:] Filed May 28, 1915. Supreme Court of Ohio. Frank E. McKean, Clerk.

22 Supreme Court of Ohio.

No. 14474.

CHARLES C. PENNINGTON, Plaintiff in Error,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Duplicate.

Bond.

Know all men by these presents, That I, Charles C. Pennington, as principal and American Surety Company of New York as sureties, are held and firmly bound unto The Fourth National Bank of Cincinnati Ohio, its successors and assigns, in the sum of Two Hundred Dollars ($200.00), to be paid to the said The Fourth National Bank of Cincinnati, Ohio, its successors and assigns, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals, and dated this 28 day of May, 1915.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

CHARLES C. PENNINGTON,
By MALLON & VORDENBERG,
His Att'ys.
AMERICAN SURETY COMPANY OF NEW YORK.
By J. S. MOSSGROVE,
Resident Vice President.

[Seal American Surety Company of New York.]

Attest:
E. C. MORRIS,
Resident Ass't Sec'y.

Bond and sureties approved.

HUGH L. NICHOLS,
Chief Justice Supreme Court of Ohio.

22½ STATE OF OHIO,
County of Franklin, ss:

On this 28th day of May, A. D. 1915, personally appeared before me, J. S. Mossgrove, who being first duly sworn deposes and says that he is the Resident Vice President and representative for the American Surety Company of New York, a corporation, incorporated under the laws of the State of New York and doing business in the State of Ohio; that the seal affixed to the foregoing instrument is the corporation seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said J. S. Mossgrove acknowledged said instrument to be the free act and deed of said corporation.

[Notarial Seal, Franklin County, Ohio.]

HAROLD W. GUITNER,
Notary Public, Franklin County, Ohio.

23

Docket Entries (*Minute Book* 32, *Page* 296).

Supreme Court of Ohio, January Term, 1914.

Attorneys.	Title of case.	Action.	Costs.	Paid by.
Mallon & Vordenberg, Cincinnati; No. 14474. W. S. Little, Cincinnati;	Charles C. Pennington vs. The Fourth National Bank of Cincinnati, Ohio.	Error to the Court of Appeals of Hamilton County.	Petition, $5.00. Printing Record, $9.00.	Mallon & Vordenberg. Mallon & Vordenberg.

O. A.

Memoranda of Pleadings Filed, Writs Issued, Judgments, Orders, and Decrees.

1914.

Jan. 9. Petition in Error, Waiver of Summons, Court of Appeals Transcript and Original Papers filed.

Jan. 29. Printed Record filed. Jan. 29. Proof of service filed.

" " Request for oral argument filed by Mallon & Vordenberg.

Apr. 6. Plaintiff's Printed Brief filed. Apr. 7. Proof of service filed.

Apr. 7. Printer's receipted bill filed.

June 5. Defendant's printed brief filed. June 5. Proof of service filed.

July 8. Plaintiff's Printed Reply brief filed. Mar. 18, 1915. Proof of service filed.

1915.

Mar. 15. Stipulation waiving oral argument filed.

Mar. 30. Judgment affirmed on authority of Benner v. Benner, 63 O. S. 220, and The Cleveland & Buffalo Transit Company v. Beeman, 81 O. S. 509. Journal 27, p. 74.

Apr. 6. Mandate issued.

" " Original Papers sent to Clerk.

May 28. Petition for Writ of Error, Assignment of Errors and prayer for reversal (allowed by Chief Justice Hugh L. Nichols) filed.

" " Writ of Error filed and allowed by Chief Justice Hugh L. Nichols.

" " Citation to defendant in error issued.

" " Bond in sum of $200.00 signed by Charles C. Pennington, by Mallon & Vordenberg, his att'ys, as principal, and by American Surety Co. of N. Y. as surety filed, and approved by Chief Justice Hugh L. Nichols.

" " Praecipe for transcript of entire record filed.

" " One copy of writ of error and one copy of petition, assignment and prayer lodged for Clerk of this Court, as allowed.

" " One copy of writ of error and one copy of petition, assignment and prayer lodged for Fourth Nat'l Bank of Cin'ti, O., as allowed.

Jun- 10. Citation returned and filed, endorsed, "On this 29th day of May, in the year of our Lord one thousand nine hundred and fifteen, personally appeared Eugene A. Scanlon before me, the subscriber, a Notary Public in and for Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to The Fourth National Bank of Cincinnati, a corporation by delivering the same to G. W. Williams its Vice President, no other chief officer being found. Also on June 1, 1915, served said Bank by delivering a true copy of within citation to Charles E. Wilson personally its President. Also on June 1, 1915, served W. S. Little, Attorney for said Bank by delivering to him a true copy of within citation. Eugene A. Scanlon. Sworn to and subscribed the 1st day of June, A. D. 1915. Harry W. Vordenberg, Notary Public in and for Hamilton County, Ohio, (Seal)."

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Journal Entries (*Journal* 27, *Page* 74).

Supreme Court of Ohio, January Term, A. D. 1915.

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No. 14474.

CHARLES C. PENNINGTON
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI.

Error to the Court of Appeals of Hamilton County.

* * * * * * *

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the Judgment of the said Court of Appeals be and the same is hereby affirmed on authority of Benner v. Benner, 63 O. S. 220, and The Cleveland & Buffalo Transit Company v. Beeman, 81 O. S. 509, and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $—.

Ordered, That a special mandate be sent to the Superior Court of Cincinnati, to carry this judgment into execution;

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Hamilton County, "for entry".

25 *Certificate of Lodgment.*

SUPREME COURT,
State of Ohio, ss:

I, Frank E. McKean, clerk of the said court, do hereby certify that there was lodged with me as such clerk on May 28th, 1915, in the matter of Charles C. Pennington versus The Fourth National Bank of Cincinnati, Ohio.

1. The original bond of which a copy is herein set forth.

2. Two copies of the Pet., Assgmt. and prayer, and 2 copies of writ of error, as herein set forth,—one for the defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Columbus, Ohio, this May 28th, 1915.

[Seal of the Supreme Court of the State of Ohio.]

FRANK E. McKEAN,
Clerk Supreme Court of Ohio.

26 Supreme Court of the State of Ohio.

CHARLES C. PENNINGTON, Plaintiff in Error,
vs.
THE FOURTH NATIONAL BANK OF CINCINNATI, OHIO, Defendant in Error.

Error to the Court of Appeals of Hamilton County.

STATE OF OHIO,
City of Columbus, ss:

I, Frank E. McKean, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing petition for writ of error, assignment of errors and prayer for reversal, order allowing writ, writ of error, citation and return of service thereon, and praecipe for transcript are the original papers filed in this Court in the above entitled case; that the foregoing copy of the bond is a true and correct copy of the original bond filed in said cause; that the printed copy of the record attached hereto is a true and correct copy of the printed record filed in said Court and used in the consideration of said cause; that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the Records of said Court; and that no opinion was rendered by the Court in said cause.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court of Ohio, this 10th day of June, A. D. 1915.

[Seal of the Supreme Court of the State of Ohio.]

FRANK E. McKEAN,
Clerk of the Supreme Court of Ohio.

Endorsed on cover: File No. 24,775. Ohio Supreme Court. Term No. 494. Charles C. Pennington, plaintiff in error, vs. The Fourth National Bank of Cincinnati, Ohio. Filed June 12th, 1915. File No. 24,775.